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COMPARATIVE LEGISLATION BULLETIN

No 4

# EXEMPTION OF WAGES

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MARGARET A. SCHAFFNER

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MADISON WISCONSIN

MARCH 1906

In the regular session of the Wisconsin legislature in 1905, many bills were introduced relating to garnishment and exemptions. Assembly bill No. 48 passed both houses and was vetoed by the Governor (see Assembly Journal, 1905, p. 1316). Bill of this nature will be introduced in the next session of the legislature. This bulletin gives in a condensed form the laws of different states and countries relating to exemption of wages. It was hoped to include other exemptions but the task was too great for the present.

The data included in this bulletin would be difficult to obtain during the rush of the legislative session. It is hoped that it will aid materially in the preparation of bills.

CHARLES MCCARTHY

*Librarian, Legislative Reference Department*

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COMPARATIVE LEGISLATION BULLETIN—No 4—MARCH 1906

Compiled with the co-operation of the Political Science Department of the University of Wisconsin

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## REFERENCES

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American State Reports. Exemption of wages, salaries, and earnings. San Francisco, 1905 (In vol. 102, p. 81-103)

Reviews and classifies leading American decisions under the following headings: exemption as dependent upon the nature of employment, the character of compensation, the classes of persons entitled, the use of the fund, the reservation of a specified amount, and the period during which amount was earned. Also considers the phraseology and the construction of exemption statutes.

Cyclopedia of law and procedure. New York, 1901-1906.

See title *Exemptions* for a brief summary of the legal doctrine relating to exemption of earnings, wages, and salaries.

Elster, Ludwig. Wörterbuch der Volkswirtschaft. 2 vols. Jena, 1898.

See title *Arbeiterschutzesetzgebung*, subtitle *Bestimmungen über Lohnzahlung* discusses foreign legislation on exemption of wages.

France—Travail, Office du (Ministère du Commerce) Saisie-arrest sur les salaires. Paris, 1899.

Gives results of an inquiry by the bureau of labor of the French ministry of commerce in response to a request from a senatorial committee charged with the examination of proposed changes in the law relating to the attachment of wages of working people, clerks, etc.

Hubbell, J. H. Legal directory. New York, 1905.

Includes a synopsis of laws relating to exemption of wages in the United States, Canada, and Mexico.

Pic, Paul. *Traité élémentaire de législation industrielle. Les lois ouvrières.* Paris, 1903.

Treats briefly exemption of wages from attachment, garnishment, or other mesne process in foreign countries, p. 712-27.

Rood, John R. *Treatise on the law of attachments, garnishments, judgments, and executions.* Ann Arbor, 1901.

Contains a collection of leading cases with notes.

U. S. Labor, Department of. *Foreign statistical publications—France.* Bulletin, March, 1901, no. 33, p. 336-40.

A brief review of conditions regarding wage exemptions and attachments in France.



## NATURE OF THE RIGHT

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### Definition

The general idea of exemption rights for debtors is set forth in the following definition: "An exemption is a privilege or immunity allowed by law to a judgment debtor by which he may hold property to a certain amount or certain classes of property free from all liability to levy and sale on execution, attachment, or other process issued in pursuance of and for the satisfaction of a money judgment."<sup>1</sup>

### Kinds of exemptions

Exemptions for debtors may be grouped according to the classes of property under homestead and personal property exemptions. From the view point of the solvency of the debtor, those exemptions which are permitted by the law in cases of bankruptcy are also to be considered.

*Homestead exemptions.* Constitutional and statutory provisions are found in most of our states exempting homesteads from execution. These exemptions vary both in amount and value, country

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<sup>1</sup> See 18 Cyc. Law and Proc. 1374.

homesteads varying within limits of from forty to one hundred and sixty acres and ranging from a hundred to five thousand dollars and upwards in value. City homesteads of equivalent values are similarly provided. Certain states place no limitation in value upon homestead exemptions.

*Personal property exemptions.* Among the classes of personal property commonly exempt may be enumerated: means for getting a living, including the libraries and instruments of professional men, farming utensils and means of reproduction, work animals, live stock, vehicles, equipment, tools and implements of trade, apparatus, and stock in trade; articles furnishing means of support or comfort, such as food, provisions, and supplies, wearing apparel, household furniture and goods; life insurance money; pension and bounty money and property purchased therewith; proceeds of exempt property; choses in action; property or money in lieu of specific exemption; and salary,<sup>1</sup> wages, or earnings.

*Exemptions in bankruptcy.* The debtor who secures discharge from further liability in case of bankruptcy besides being entitled to the usual homestead and personal property exemptions provided

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<sup>1</sup> Salaries of public officers are generally exempt; the grounds for this exemption are: 1. that the state or municipality is not subject to garnishment, 2. that public policy demands such exemption, 3. that the exemption of salary is within the statutory provision. Compare 54 L. R. A. 566. For recent legislation, however, see Ill. Laws, 1905, p. 285; N. Y. Laws, 1905, c. 175; N. D. Laws, 1905, c. 69; and Ut. Laws, 1905, c. 96.

in the several states<sup>1</sup> secures the additional advantage of reserving his future earnings intact against execution for past debts.

*Exemption of wages.* The enumeration of the various classes of exemptions evidences the fact that the exemption of wages from execution, attachment, garnishment, or other mesne process forms but one part of the general subject of exemptions.

### Liabilities enforceable against exemption rights

Among the more common liabilities enforceable against exempt property are: pre-existing liabilities,<sup>2</sup> debts not founded in contract,<sup>3</sup> purchase price,<sup>4</sup> debts for necessities,<sup>5</sup> including board and lodging,<sup>6</sup> debts for wages and material,<sup>7</sup> and debts due the government.<sup>8</sup>

### Waiver

In certain jurisdictions it is held that the exemption right may be claimed or waived at will;<sup>9</sup> in

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<sup>1</sup> Bankruptcy Act, July 1. 1898, as amended by Act, Feb. 5, 1903. (U. S. Comp. St. 1901, p. 3418, and U. S. Comp. St. Supp. 1903, p. 410)

<sup>2</sup> See *Brown v. Reiser*, 1890, 8 Pa. Co. C. 416; and *Finns v. Banker*, 1888, 5 Pa. Co. C. 311.

<sup>3</sup> See 18 Cyc. Law and Proc. 1387.

<sup>4</sup> See *In re Tobias*, 1900, 103 Fed. 68.

<sup>5</sup> See *Lenhoff v. Flsher*, 1891, 32 Neb. 107.

<sup>6</sup> See *Thomas v. Glasgow*, 1892, 2 Pa. Dlst. 711.

<sup>7</sup> See *Dickinson v. Rahn*, 1901, 98 Ill. App. 245; contra *Frutchev v. Lutz*, 1895, 167 Pa. St. 337.

<sup>8</sup> See *U. S. v. Howell*, 1881, 9 Fed. 674.

<sup>9</sup> See *Keybers v. McComber*, 1885, 67 Cal. 395; *Moss v. Jenkins*, 1896, 146 Ind. 589; *Fogg v. Littlefield*, 1877, 68 Me. 52.

others the debtor is not allowed to waive his exemption in property exempt for the use of his family.<sup>1</sup>

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<sup>1</sup> See *Burke v. Finley*, 1893, 50 Kan. 424; *Ross v. Lister*, 1855, 14 Tex. 469; *Powell v. Dally*, 1896, 163 Ill. 646.

LAWS AND JUDICIAL DECISIONS<sup>1</sup>

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The laws exempting wages in different countries may be grouped into three general classes:<sup>2</sup> 1. those providing for total exemption without reference to amount of wages earned; 2. those granting total exemption up to a certain maximum amount; 3. those providing for the exemption of a proportionate part of wages.

Grouping leading foreign countries according to the main provisions of their law, Germany, England, Norway, and Brazil fall in the first group; Hungary, Austria, and Spain in the second; and Belgium, France, Luxemburg, and Russia in the third.

The majority of the different laws in the United States belong to the second and third groups; while

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<sup>1</sup> In summarizing the main features of the exemption of wages, attention is centered largely on points which relate to the positive rights conferred rather than to the remedies developed to make those rights effective. But while limitations of space forbid any considerable reference to the processes against which the right of exemption may be asserted or to the proceedings to enforce and protect the right it must not be forgotten that the difference between an effective law and one which secures but indifferent results is more frequently found in the remedies provided for maintaining the right than in the amount of the property exempt.

<sup>2</sup> See Pic, *Traité élémentaire de législation*...p. 712-27; also Elster, *Wörterbuch*, title '*Arbeiterschutzgesetzgebung*.'

a few states<sup>1</sup> have constitutional or statutory requirements making exemptions as complete as the foreign countries of the first group.

### Foreign countries<sup>2</sup>

*Germany.* The law of 1869 modified by the law of 1897 provides for the total exemption of wages without reference to the amount earned.<sup>3</sup> If the laborer after the execution of the work or furnishing of services voluntarily allows his remuneration to remain unclaimed after the day on which he could claim pay, the wages or salary may become liable for debts. But with the exception of this voluntary waiving of rights the law specifically states that wages and salaries are not subject to garnishment or attachment proceedings except in favor of the relatives of the employee who under the law have a right to support from him. The law further makes employers paying wages or salaries to creditors of employees liable to a fine limited to 150 marks (\$35.70) or imprisonment not exceeding four weeks. The assignment of wages is also forbidden.

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<sup>1</sup> See Tex. Const. 1876, art. 16, sec. 28; also Ga. Const. 1877 as amended in 1887 and Civ. Code, 1895, sec. 4732.

<sup>2</sup> The references to foreign money are also given in terms of our own but the amount of the exemption must be considered from the standpoint of purchasing power in the several countries in order to understand its real significance. A further point to be considered in a comparison of the several countries is the proportion that the exemption bears to the usual wage earned by able bodied artisans maintaining a fair standard of life.

<sup>3</sup> See Law of June 21, 1869, and of Mar. 29, 1897; also sec. 148 of Gew. O. Ziff. 13.

*Norway.* The law of March 29, 1890, provides for total exemption of wages without reference to the amount earned.

*England.* The Merchant Shipping Act, 1854, 17 and 18 Vict. c. 104, ser. 233, provides that seamen's wages due or accruing shall not be subject to attachment or arrestment from any court.

Under the Wages Attachment Abolition Act, 1870, 33 and 34 Vict. c. 30, no attachment of wages of any servant, laborer or workman is permitted.

The salary of a secretary to a company amounting to two hundred pounds (\$973.30) a year is not "wages" of a "servant" within the Wages Attachment Abolition Act, and is therefore not exempted from attachment by that act. *Gordon v. Jennings*, 1882, 9 Q. B. D. 45.

The exemption of wages is less effective in England than in several continental countries because the assignment of wages is permitted.<sup>1</sup>

*Australia.* The states of the Australian commonwealth have quite generally a maximum exemption of wages and salaries amounting to two pounds (\$9.733) a week. The Victoria act of 1898, no. 1573 and the New South Wales act of 1900, no. 6, are typical of Australian statutes for wage exemptions.

*Canada.* The laws for the exemption of wages in Canada are somewhat similar to those of the United States. Manitoba, Rev. St. 1902, c. 68, is typical of

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<sup>1</sup> See Supreme Court of Judicature Act, 1873, 36 and 37 Vict. c. 66, sec. 25, subd. 6.

those provinces which grant total exemption up to a certain maximum amount, while Quebec, Code Civ. Proc. 1902, art. 599, sec. 11, illustrates those which exempt a proportionate part of the wages earned.<sup>1</sup>

*New Zealand.* The Act of 1895, no. 22, exempts wages not exceeding two pounds (\$9.733) per week. Any surplus above that sum is liable to attachment but the costs are not chargeable against the workman unless the creditor recovers a sum equal to or greater than costs.

*Austria.* The law of Apr. 25, 1873 modified by the law of May 26, 1888, provides for total exemption of wages, not exceeding eight hundred florins (\$385.80) a year, for laborers whose time is fixed by law, agreement, or usage at a year at least and whose employment ceases only upon three months notice. Wages of other laborers are exempt up to two-thirds of the total amount.

*Hungary.* The law of Civil Procedure, June 1, 1881, art. 62, exempts wages below one florin, fifty kreutzer (\$0.623) per day.

*Spain.* The Civil Code provides for the total exemption of wages below twenty-four réaux (approximately \$1.158) per day.

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<sup>1</sup> For a summary of Canadian exemption statutes see Hubbell, Legal directory, 1905, p. 816-54.



*Switzerland.* The Swiss law of Apr. 11, 1889, leaves the care of fixing the proportion of wages which may be attached to the judicial authority.

*France.* The law of Jan. 12, 1895, exempts nine-tenths of the wages of laborers; emoluments or salaries not exceeding 2,000 francs (\$386) are similarly exempt. The law also permits an assignment not to exceed one-tenth of wages. (The assignable tenth is distinct from the attachable tenth and must not be confused with it.) Finally the employer is also permitted to retain a tenth,—distinct both from the assignable and the attachable tenth,—for advances in cash made to an employee. In case of the attachments, assignments and retentions permitted by the law all being enforced against the laborer, he is still guaranteed at least seven-tenths of his wages. The procedure under the French law is so cumbersome that the cost of proceedings against the one-tenth attachable frequently exceeds the amount of the debt. This works to the general disadvantage of debtor, creditor, and employer.<sup>1</sup>

*Belgium.* According to the law of Apr. 18, 1887, four-fifths of the wages of laborers are exempt. The rule also applies to salaries not exceeding 1200 francs (\$231.60).

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<sup>1</sup> Various amendments to the French law have been proposed and certain modifications of the law are now (Feb. 1906) under consideration.

*Luxemburg.* The law of July 12, 1895, exempts nine-tenths of wages not exceeding six francs (\$1.158) a day, and four-fifths of wages exceeding that amount.

*Russia.* The law of 1886 exempts one-third of the wages of an employe having a family to support, and one-fourth the wages of others.

### United States

Act of Cong. June 7, 1872 (Comp. St. 1901, sec. 4536) No wages due or accruing to any seaman or apprentice are subject to attachment or arrestment from any court.<sup>1</sup>

*Alabama.* Const. 1901, art. 10. Makes general provision for exemptions.

Code, 1896, sec. 2038, as amended by Acts 1898-99, no. 734. Exempts to amount of \$25 per month wages, salaries, or other compensation for personal services of laborers or employees residents of the state. The fact of such indebtedness being disclosed by answer of garnishee, the levy is void and is to be dismissed by the court unless plaintiff contests answer of garnishee.

sec. 2074. Wages or salary of deceased employe to a sum not exceeding \$100 may be paid to widow or to person having control of his minor

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<sup>1</sup> See *The John E. Holbrook*, 1874, (U. S. D. C.) 7 Ben. 356; *Hitchcock v. The St. Louis*, 1891, (U. S. D. C.) 48 Fed 312; *The Queen*, 1899, (U. S. D. C.) 93 Fed. 834.

children, and the sum so paid is exempt as part of the \$1,000 in personality exempted to them.

sec. 3728. Set-offs not to defeat exemption of wages.

*Alaska.* Code Civ. Proc. 1900, sec. 273. Sixty days' earnings for personal services are exempt, if selected and reserved by the debtor at time of levy, if such earnings are necessary for family support.

*Arizona.* Civ. Code, 1901, secs. 388, 2732. Thirty days' earnings for personal services exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for support of his family residing in territory.

*Arkansas.* Const. 1874, art. 9. General provision for exemptions.

Dig. 1894, sec. 3717. Wages of laborers and mechanics for sixty days exempt from garnishment or other legal process provided defendant files with court issuing process a sworn statement that wages claimed amount to less than his constitutional exemption and that he does not own sufficient other personal property to exceed amount exempted by the constitution.

*California.* Const. 1880, art. 17, sec. 1. Provides for exemption laws in favor of heads of families.

Code Civ. Proc. 1903, sec. 690, subd. 9, 10. Seamen's and seagoing fishermen's wages and earnings not exceeding \$300 are exempt. Thirty days' earn-

ings for personal services are exempt when necessary for use of debtor's family residing in the state and supported in whole or in part by his labor; but where debts are incurred for common necessities of life or have been incurred when debtor had no family residing in the state one-half of such earnings are subject to execution, garnishment or attachment to satisfy debts so incurred.

*Colorado.* Const. 1876, art. 18, sec. 1. "The general assembly shall pass liberal . . . exemption laws."

Anno. St. 1891, sec. 2567, as amended by Acts, 1894, c. 5 and Acts, 1903, c. 132. Sixty per cent of wages or earnings exempt from levy under execution, attachment, or garnishment provided debtor be the head of a family or the wife of the head of a family residing in the state and dependent in whole or in part upon such earnings for support. The entire sum exempt when wages do not exceed \$5 per week.

*Connecticut.* Gen. St. 1902, secs. 774, 777. No costs are to be taxed in favor of plaintiff unless he has made prior demand upon defendant for debt. Plaintiff not to recover costs exceeding one-half of amount of damages recovered.

sec. 836. No assignment of future earnings is valid against an attaching creditor unless made to secure a bona fide debt due at date of such assignment.

Laws, 1903, c. 95, as amended by Laws, 1905, c. 195. The sum of \$25 accrued by reason of personal services including wages due for personal services of any minor child is exempt from foreign attachment or execution, but no exemption for any debt incurred for personal board.

*Delaware.* Rev. Code, 1893, c. III, sec. I. Fifty per cent of wages for labor or service of any person and all wages of women and minors are exempt from execution.

c. 111 as amended by Acts, 1901, c. 209 (Applies only to New Castle Co.) Ninety per cent of wages for labor or service of any person residing within New Castle county is exempt from attachment and execution except for debts for board or lodging. Amount exempt not to exceed \$50. The ten per cent is liable for necessities only. Only one attachment may be made. The total liability of the debtor for costs under any attachment is not to exceed ninety cents provided, however, that costs are to be paid out of the whole amount of wages.

*District of Columbia.* Code, 1901, amended, 1902, sec. 1107. Earnings are exempt from execution to the amount of \$100 each month for all actual residents who have provided for the support of a family in the district for two months preceeding the issuing of the writ or process.

*Florida.* Const. 1885, art. 10. Makes general provision for exemptions.

Rev. St. 1891, sec. 2008, 2009. Earnings for personal services of the head of a family are exempt. In case of attachment the person to whom money is due may make oath that money attached is due for personal labor and service and that he or she is the head of a family residing in the state and if such affidavits are not denied within two days after service of notice the process is to be returned and all proceedings under the same are to cease. If facts are denied by party issuing process matter is to be tried by court.

*Georgia.* Const. 1877, as amended in 1887, art. 9. General provision for exemptions.

Civ. Code, 1895, sec. 4732. All journeymen, mechanics, and day laborers are exempt from garnishment on their daily, weekly or monthly wages whether in the hands of their employers or others.

A general waiver of the benefits of a laborer's exemption in a note is void. *Green v. Watson*, 1885, 75 Ga. 471.

Wages improperly in the hands of a magistrate through garnishment may be recovered by a rule against him. *Curran v. Fleming et al.* 1885, 76 Ga. 98.

A locomotive engineer's monthly wages are exempt. *Sanner v. Shivers*, 1886, 76 Ga. 335.

And the monthly wages of a private secretary. *Abrahams v. Anderson et al.* 1888, 80 Ga. 570.

And the wages of a conductor on a street railway. *Stuart v. Poole*, 1901, 112 Ga. 818.

Wages of a superintendent in a factory are not exempt. *Kyle v. Montgomery et al.* 1884, 73 Ga. 337.

Nor of a railway passenger conductor. *Miller & Bussey v. Dugas*, 1886, 77 Ga. 386.

Laws, 1898, no. 19. Sending claims for debts out of state with intent to deprive any resident of his exemption rights made a misdemeanor punishable

by fine ranging from \$10 to \$50 for each claim transferred.

Laws, 1902, p. 60. Wages to the amount of \$100 of deceased employee of corporation may be paid to widow or guardian of minor children and such sum is exempt from execution.

Laws, 1904, p. 79. Contracts made for assignment or pledge of unearned wages or salary are void.

*Hawaii.* Acts, 1901, no. 9, secs. 1, 8, as amended by Acts, 1903, no. 52. One-half the wages due every laborer or person working for wages are exempt from attachment, execution, distress and forced sale of every nature and description.

*Idaho.* Code Civ. Proc. 1901, sec. 3542. Thirty days' earnings for personal services are exempt when necessary for the use of debtor's family residing in the state.

*Illinois.* Const. 1870, art. 4, sec. 32. "The general assembly shall pass liberal . . . exemption laws."

Rev. St. 1903, c. 62, sec. 14. Wages to the amount of \$15 per week are exempt for the head of a family residing with the same. Only the surplus above such exempt wages is to be held by employer to abide the event of the garnishment suit. If costs of the garnishment exceed surplus so held the remainder is to be paid by plaintiff. In no case is any employer to be liable to answer for any amount not earned at the time of service of writ. At least

twenty-four hours before bringing suit a demand in writing is to be made upon the wage earner and the employer for the excess above the amount exempted. Receipt of such demand is to be endorsed thereon at the time of service and the return duly sworn before it is lawful to issue a summons or to require an employer to answer in any garnishee proceeding. Any judgment rendered without such demand duly proven and filed is void. The excess of wages is to be held by employer five days after service of demand.

secs. 32-34: Sending or assigning any claim for debt outside of state to be collected by proceedings in attachment, garnishment or other mesne process with intent to deprive a resident of Illinois of exemption rights is punishable by a fine of not less than \$10 nor more than \$50. In case of garnishment proceedings against non-residents the law of the state of residence controls.

Sending claim out of state to be collected when garnishee is within reach of our courts is a misdemeanor. *Wabash R. Co. v. Dungan*, 1892, 142 Ill. 248.

sec. 34a. Wages earned outside the state and payable out of the state are exempt from attachment or garnishment in all cases where the cause of action arose outside of the state, unless the defendant is personally served with process. In case there is no personal process the suit is to be dismissed at the cost of plaintiff.

If the creditor, debtor, and garnishee at the time of the creating of both debts are all residents and doing business in the same state, the exemption of wages is such an incident and condition of the debt from the employer that it will follow the debt, if the debt follows the person of the



garnishee into another state, and attach itself to every process of collection in any state, unless jurisdiction is obtained over the person of the principal debtor. *B. & O. S. W. R. Co. v. McDonald*, 1904, 112 Ill. App. 391.<sup>1</sup>

*Indiana.* Const. 1851, art. 1, sec. 22. "The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted". . .

Anno. St. 1901, sec. 715. Entitles householders to an exemption of \$600.

sec. 970. Wages due to non-residents from any person or corporation doing business in the state are not subject to any attachment, garnishment, or supplementary proceeding in the courts of the state.

secs. 971-72. Wages of householders are exempt from execution to an amount not exceeding \$25 at any one time. Garnishee may pay exempted wages to employee and such payment discharges garnishee from liability for the amount so paid as effectually as if paid before the summons.

sec. 2283. Sending claim out of state for collection is punishable by fine ranging from \$20 to \$50.

Personally taking claim out of the state is sending it within the meaning of this section. *Wilson v. Joseph*; 1886, 107 Ind. 490.

The collection of a claim in contravention of this section renders the creditor liable to the debtor. *Main v. Field*, 1895, 13 Ind. App. 401.

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<sup>1</sup> Compare the recent decision of the U. S. supreme court in *Louisville & N. R. Co. v. Deer*, 1906, 26 Snp. Ct. Rep. 207, as to jurisdiction in garnishment when the garnishee is a foreign corporation.

In construing secs. 971-72, that the wages of householders not exceeding \$25 shall be exempt from garnishment, with the general exemption in sec. 715 allowing to resident householders an exemption of \$600, the latter applies to resident householders and the former to householders not resident in the state. *Pomeroy v. Beach*, 1897, 149 Ind. 511.

*Iowa*. Code, 1897, sec. 4011. Personal earnings within ninety days preceding the levy are exempt for a debtor who is the head of a family and a resident of the state.

The object of the statute being to protect the earnings of the debtor from subjection to his debts, it is not to be limited in its application to cases of attachment or execution, but is to be extended so as to afford protection against any method of subjecting such earnings to the claims of creditors. *Millington v. Laurer*, 1893, 89 Ia. 322.

sec. 4017. Failure to claim exemption does not waive right unless such claim is required in writing by an officer about to make levy.

sec. 4018. Sending claims out of state to defeat exemption is a misdemeanor, punishable by a fine ranging from \$10 to \$50.

sec. 3948. as amended by Acts, 1898, c. 103. Defendant in garnishment action may plead exemption and if such exemption is shown in trial of issue the garnishee is to be discharged as to that part which is not liable.

Laws, 1904, c. 124. Wages of non-resident earned outside of state and payable outside of state are exempt from attachment or garnishment by non-resident creditor on cause of action arising without state. Duty of garnishee to plead exemption unless defendant is personally served with original notice in the state.

*Kansas.* Const. 1861, art. 15, sec. 9. General provision for exemptions.

Gen. St. 1901, secs. 4966, 4967. Earnings for personal service for three months' time are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for family support. Debtor must notify plaintiff on filing affidavit and matter sought to be proven may be controverted.

This exemption being created for the benefit of the debtor's family cannot be waived. *Burke v. Finley*, 1893, 50 Kan. 424.

Laws, 1905, c. 337. Judgment for defendant does not discharge attachment or garnishment if plaintiff appeals in time and in manner prescribed by law.

Laws, 1905, c. 523. Wages earned without state and payable outside of state are exempt from attachment or garnishment in all cases where the cause of action arose out of the state unless defendant is personally served with process.

*Kentucky.* St. 1899, sec. 1697. For persons with a family resident in the state, wages amounting to \$40 for each member of the family are exempt in case other personal property which is exempt from execution attachment or distress is not on hand.

Laws, 1902, c. 23. Wages earned outside of state are exempt in all cases where the cause of action arose out of the state. Duty of garnishee to plead such exemption unless the defendant is actually served with process.

*Louisiana.* Const. 1898, art. 244-47. Makes provision for exemptions.

Rev. Laws, 1904, sec. 1696. Wages for personal services are exempt.

Wages of skilled laborers in trades are not exempt. State ex rel. I. X. L. G. Co. v. Land, 1902, 108 La. 512.

Laws, 1904, c. 165. Wages earned out of state are exempt from attachment if cause of action arose out of state. Duty of garnishee to plead exemption unless defendant is actually served with process.

*Maine.* Rev. St. 1903, c. 72, sec. 68 and c. 88, sec. 55. Wages for personal labor to the amount of \$20 for one month are exempt, except for necessities furnished to debtor or his family. Wages of minor children and of women are not subject to trustee process on account of any debt of parent or of husband.

*Maryland.* Const. 1867, art. 3, sec. 44. "Laws shall be passed by the general assembly to protect from execution a reasonable amount of the property of the debtor". . .

Pub. Gen. Laws, 1903, art. 9, secs. 33, 34. Wages amounting to \$100 are exempt from attachment by any process whatever. Attachment on future earnings forbidden. Provisions apply to non-residents.

*Massachusetts.* Rev. Laws, 1902, c. 189, secs. 27, 29, 31. Wages for personal service are exempt to the amount of \$20 unless attached for necessities for family in which case an amount not exceeding \$10 is exempt. Unlawful attachment punishable by fine not exceeding \$50 for the use of the person in-

jured. Wages of wife or children are exempt; also seamen's wages.

An employer's debt to his employee is not discharged by satisfying a judgment against himself as trustee when the sum involved is exempted under this section. *Burns v. Marland mfg. co.* 1860, 80 Mass. 487.

Wages collected and in the hands of an attorney at law are no longer under the protection of this statute though less than \$20 in amount. *Cook v. Holbrook* 1863, 88 Mass. 572.

Where wages are attached by trustee process the sum of \$10 reserved under the above section, is payable to the employee notwithstanding the pendency of the suit. *Sullivan v. Hadley co.* 1893, 160 Mass. 32.

*Michigan.* Const. 1850, art. 16. General provision for exemptions.

Comp. Laws, 1897, sec. 991, as amended by Acts, 1901, no. 172. Wages of householders to the amount of eighty per cent but in no case for more than \$30 nor less than \$8 are exempt from execution. Other employees are permitted exemptions equal to forty per cent of wages and for an amount not exceeding \$15 nor less than \$4.

A householder's family need not reside within the state to bring his wages within this statute. *Pettit v. Booming co.* 1889, 74 Mich. 214.

A garnishee pays over exempted wages at his peril. *Crisp v. Ft. W. & E. R. co.* 1894, 98 Mich. 648.

*Minnesota.* Const. 1857, art. 1, sec. 12. "A reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability. The amount of such exemption shall be determined by law."

Rev. Laws, 1905, sec. 4317. Wages of any person not exceeding \$25 due for services thirty days

preceding the levy are exempt. Earnings of minor children exempt unless used for their special benefit.

A creditor will not be permitted to initiate a series of garnishments and thus tie up in hands of an employer separate amounts of money and then by another proceeding in garnishment appropriate these amounts to the payment of his debt. Such proceedings are a perversion of civil process and cannot be sanctioned. *Rustad v. Bishop*, 1900,\*80 Minn. 497.

*Mississippi.* Rev. Code, 1892, sec. 1963. Wages of head of family are exempt to the amount of \$100, of every other person to the amount of \$20.

A laborer cannot be made to lose the right given by this section by failure of garnishee debtor to plead exemption. *Laurel v. Turner*, 1902, 80 Miss. 530.

This law cannot be evaded by holding monthly balances until an aggregate exceeding \$100 is reached. The laborer has a right to his exemption at the end of each month unless his earnings exceed \$100. *Chapman et al. v. Berry*, 1895, 73 Miss. 437.

*Missouri.* Rev. St. 1899, sec. 384. Provisions for exemption of wages do not apply to non-resident defendant or one about to leave state with intent to change his domicile.

sec. 3162 as amended by Laws, 1903, p. 105. Each head of a family in lieu of other property exempt, may select and hold exempt wages not exceeding \$300 with the exception of ten per cent of the amount.

sec. 3435, as amended by Acts, 1903, p. 199. Ninety per cent of earnings for thirty days' service are exempt if employee is head of a family and a resident of state.

The continued payment by a garnishee of wages earned by his employee do not subject such garnishee to liability

when wages are for services rendered within thirty days prior to payments made. *Davis et al. v. Meredith et al.* 1871, 48 Mo. 263.

Payment by a garnishee of wages properly exempt does not relieve him of his debt to his employee for such wages. *Dunn v. M. P. R. co.* 1891. 45 Mo. App. 29.

secs. 3447, 3448. Where sum demanded is \$200 or less and where property sought to be reached is wages due defendant from a railway corporation judgment is to proceed issue of writ of garnishment. A railroad company need not answer in any action against any person to whom it may be indebted on account of wages for personal services where a writ of garnishment was served in advance of recovery by plaintiff against defendant in any action for \$200 or less, and any officer entering such judgment shall be considered a trespasser and may be enjoined by any court having jurisdiction.

*Montana.* Const. 1889, art. 19, sec. 4. "The legislative assembly shall enact liberal . . . exemption laws."

Code Civ. Proc. 1895, sec. 1222, as amended by Laws, 1905, c. 8. Earnings for thirty days are exempt when shown by debtor's affidavit or otherwise that they are necessary for support of family residing within state but one-half such earnings are subject to execution, garnishment, or attachment to satisfy debts for common necessities of life.

*Nebraska.* Comp. St. 1903, sec. 7099. Sixty days' wages of laborers, mechanics, and clerks who are heads of families are exempt. Provisions do not

apply to persons about to abscond or leave the state. Exemption applies whether wages are in hands of employer or of employee.

Exemption extends to non-residents. *Wright v. C. B. & Q. R. co.* 1886, 19 Neb. 175.

A laborer may maintain an action against a creditor to recover wages wrongfully garnished. *Albrecht v. Treitschke*, 1885, 17 Neb. 205.

sec. 7101. The assignment of claims to evade exemption of wages is unlawful.

One who assigns a claim contrary to the provisions of this statute is liable to the debtor for the amount so appropriated without his consent. *O'Connor v. Walter*, 1893, 37 Neb. 267.

*Nevada.* Const. 1864, art. 4, sec. 30. General provision for exemption laws.

Comp. Laws, 1899, sec. 3340. Earnings for personal services not exceeding \$50 for calendar month are exempt when shown by debtor's affidavit or otherwise to be necessary for family support.

*New Hampshire.* Pub. St. 1901, c. 245, sec. 20. Wages amounting to \$20 are exempt from trustee process if earned before service of writ except in action to recover for necessities furnished to debtor's family. Wages earned subsequent to writ are exempt from process. Earnings of debtor's wife and minor children are also exempt.

*New Jersey.* Gen. St. 1895, p. 116, sec. 103. Wages of non-resident employees are not liable to attachment by a non-resident creditor.

An attachment in New Jersey for wages can only issue against an absconding debtor, and wages cannot be reached under Acts, 1901, c. 177 upon an execution, except upon an



order that such installment of said wages as a judicial officer shall determine shall be paid from time to time. *Margarum v. Moon*, 1902, 63 N. J. Eq. 586.

*New Mexico.* Comp. Laws, 1897, sec. 1737, as amended by Laws, 1905, c. 82. Sixty days' earnings of head of a family or of a widow are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for support. Does not apply to debts incurred for manual labor or for necessities of life.

*New York.* Gilbert, Code Civ. Proc. 1905, secs. 1391, 1392, 2463, 3028. Sixty days' earnings for personal services are exempt when shown by debtor's oath or otherwise that such earnings are necessary for family support. Execution against ten per cent of wages where they exceed \$12 a week is authorized for recovery for necessities furnished or for personal services rendered to debtor.

To secure an execution against wages it must appear that the judgment was recovered wholly for necessities sold and that no similar execution is outstanding. *Neuman v. Mortimer*, 1904, 98 N. Y. App. Div. 64.

*North Carolina.* Const. 1868, art. 10. General provision for exemptions.

Code Civ. Proc. sec. 493. Earnings for personal services within sixty days preceding order are exempt when shown by debtor's affidavit or otherwise to be necessary for family support.

*North Dakota.* Const. 1889, art. 17, sec. 208. "The right of the debtor to enjoy the comforts and

necessaries of life shall be recognized by wholesome laws exempting to all heads of families . . . a reasonable amount of personal property, the kind and value to be fixed by law."

Code Civ. Proc. 1899, sec. 5567. Sixty days' wages are exempt when shown by debtor's affidavit or otherwise to be necessary for family support.

*Ohio.* Anno. St. (3rd ed.) secs. 5430, 5441, 5483, 6489. Every person having a family and every widow may hold three months' earnings, but not more than \$150, exempt when such earnings are shown to be necessary for support. In case the claim is one for necessaries then only ninety per cent is exempt.

sec. 7014. Sending claim out of state to evade exemption laws is punishable by fine ranging from \$20 to \$50. The person whose personal earnings are so attached has right of action to recover the amount and costs either from the person transferring the claim or from the one to whom the claim is transferred or both at the option of the person bringing suit.

The sale of a claim to a non-resident is not forbidden. *Goldsborough v. Bolenbaugh*, 1889, 3 Ohio C. C. 583.

*Oklahoma.* St. 1903, secs. 2985-87, 5084. Ninety days' earnings for personal or professional services on part of the head of a family residing in territory are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for

family support. Current wages are exempt for persons not heads of families.

To constitute a head of a family requires a condition of dependence on part of others whom one is under legal or moral obligations to support. An unmarried man supporting a dependent mother and sister is the head of a family within this section. *Rolater v. King*, 1903, 13 Okla. 37.

*Oregon.* Anno Codes and St. 1902; c. 2, t. 3, sec. 228, as amended by Laws, 1903, p. 26, and by Laws, 1905, c. 220. Thirty days' earnings not exceeding \$75 are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for family support; except that fifty per cent of such earnings are subject to attachment, execution, or garnishment, if debt was incurred for family expenses furnished within six months of service of process.

*Pennsylvania.* Dig. 1894, p. 834, sec. 40. Unlawful to send claims for debts outside of state with purpose of evading exemption laws. The assignor is made liable to the person or persons from whom any such claim has been collected by attachment or otherwise.

p. 836, sec. 49 and p. 2077, sec. 25, 26, as amended by Laws, 1905, no. 99. Wages of laborers or salaries of persons in public or private employment are not liable to attachment in hands of employer, except that wages due or owing may be attached for debts for board for a period not exceeding four weeks.

Includes non-resident laborers. *Billin v. Froment*, 1887, 3 Pa. Co. C. 450.

*Rhode Island.* Gen. Laws, 1896, c. 255, sec. 5, as amended by Pub. Laws, 1900-01, c. 751 and 841. Exemptions include: wages due or accruing to seamen; salary or wages due or payable to any debtor not exceeding the sum of \$10, except for necessities furnished defendant in which case adjustment is left to the discretion of the court; also the salary and wages of wife and of minor children.

*South Carolina.* Const. 1895, art. 3, sec. 28. General provision for exemptions.

Code Civ. Proc. 1902, sec. 317. Sixty days' earnings for personal services are exempt when shown by debtor's affidavit or otherwise to be necessary for family support.

*South Dakota.* Const. 1889, art. 21, sec. 4. "The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws, exempting a reasonable amount of personal property the kind and value of which is to be fixed by general law."

sec. 5. Earnings of a married woman are not liable for debts of husband.

Code. Civ. Proc. 1903, sec. 403. Sixty days' wages for personal services are exempt when shown by debtor's affidavit or otherwise to be necessary for family support.

Justices Code, 1903, sec. 41. In attachment suits brought against non-residents for wages earned and payable outside the state the exemption law of state of residence controls.

*Tennessee.* Const. 1870, art. 11, sec. 11. General provision for exemptions.

Laws, 1871, c. 71 as amended by Laws, 1905, c. 376. Exempts ninety per cent of wages or salary amounting to \$40 or less per month, and \$36 for persons earning in excess of \$40. Applies to the income of every resident of the state who is eighteen years of age or upward, or who is the head of a family. No attachment or garnishment is to be issued for future wages or salary.

Applies only to wages actually due and not to all wages earned. Pay day cannot be anticipated by a writ of garnishment. *Weaver v. Hill*, 1896, 97 Tenn. 402.

Laws, 1903, c. 21 and 453. Unless written assent of employer was given to assignment, he is not to be charged for any assignment of unearned wages or salary made by any employee.

Laws, 1903, c. 590. Wages earned and payable without the state are exempt where cause of action arose without the state. Duty of garnishee to plead exemption unless defendant is actually served with process.

*Texas.* Const. 1876, art. 16, sec. 28. No current wages for personal services shall ever be subject to garnishment.

Wages past due, left with employer, because employee can not collect from him, continue to be current wages. *Davidson v. Chair co.* 1897, 41 S. W. (Tex. Civ. App.) 824.

*Utah.* Rev. St. 1898, secs. 3243, 3245. as amended by Laws, 1901, c. 31, and Laws, 1905, c. 37. Minor's earnings are exempt for debts not contracted for his

special benefit. One-half the earnings of the head of a family for personal services rendered within thirty days preceding the levy are exempt from execution when shown by the debtor's affidavit that such earnings are necessary for support of his family residing in the state. When the earnings are \$2 a day or less the exemption is \$30 per month and in no case is the debtor to be taxed with the costs of proceeding. Requires the payment of a \$2 fee by the plaintiff to the garnishee before answer can be required in garnishment proceedings.

*Vermont.* St. 1894, c. 69, sec. 1312, as amended by Laws, 1896, no. 31, and Laws, 1905, no. 62. Wages for labor performed after the service of trustee process are exempt. Wages of a minor are not liable for debts of parent nor of a married woman for debts of husband. For non-residents exemption law of state of residence controls.

*Virginia.* Const. 1902, art. 14, secs. 190-94. General provision for exemptions.

Code, 1904, sec. 3652. Wages not exceeding \$50 per month owing to a laboring man being a householder are exempt from distress, levy, or garnishment.

This exemption cannot be waived. *Crump v. Com.* 1882. 75 Va. 922.

The term "laboring man" includes all householders who receive wages for their services. *Mahoney v. James*, 1897, 94 Va. 178.

sec. 3652a. Sending claim for debt out of state in order to evade exemption laws is unlawful.

sec. 3652c. Wages of minors are not liable for debts of parents.

sec. 3656. An injunction may be awarded to prevent garnishment of exempt wages.

*Washington.* Const. 1889, art. 19. Provides that the legislature shall enact exemption laws in favor of all heads of families.

Code, 1901, sec. 565. Current wages for personal services amounting to \$100 are exempt for any person having a family to support, if garnishment is for debt for actual necessities no exemption in excess of \$10 per week for four consecutive weeks is allowed.

*West Virginia.* Const. 1872, art. 6, sec. 48. General provision for exemptions.

Code, 1899, c. 41, sec. 29a. Assigning claims for collection outside of state in order to evade exemption laws is unlawful.

c. 66, sec. 12. Earnings of a married woman are not subject to garnishment for husband's debt but are liable for her own debts.

*Wisconsin.* Const. art. 1, sec. 17. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted.

Rev. St. 1898, sec. 2982. Three months' earnings not to exceed the amount of \$60 for each month or

\$180 in all, are exempt for any person having a family dependent for support. Earnings of minor children are included. The garnishee shall recover costs when the debt or property sought to be reached is exempt from execution against the principal debtor at the time of serving the process on the garnishee.

In garnishment proceedings the burden is on plaintiff to prove the allegation of the garnishment affidavit that the indebtedness is not exempt. *Eastlund v. Armstrong*, 1903, 117 Wis. 394.

sec. 3723-3723b as amended by Laws, 1901, c. 280. Garnishee may plead exemption but is in no manner to be held liable to defendant or to any other person for failure to set up such exemption.

sec. 4438f. Any person, with the intent of depriving any bona fide resident of the state of exemption rights, assigning any claim for the purpose of having the same collected out of the earnings of a debtor or of his minor children in the courts of another state when the parties are all within the jurisdiction of the courts of the state is punishable by fine of not less than \$10 nor more than \$50 for each offense.

Laws, 1905, c. 148. Assignment of wages exempt from garnishment by married man is invalid unless signed by wife. Such assignment not valid for more than two months.

c. 226. The earnings of a minor are not liable for the debts of a parent who by reason of abandonment, drunkenness, or profligacy neglects to provide for the support or education of such minor.



*Wyoming.* Rev. St. 1899, secs. 2516-19. Any person making an assignment of debts in order to evade exemption laws is liable to the party injured for the amount so transferred, with all costs and expenses and a reasonable attorney's fee and is further liable by prosecution for a fine not exceeding \$100 and costs.

sec. 3951, as amended by Acts, 1903, c. 31. One-half the earnings for personal services rendered within sixty days preceding the levy are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for support of his family residing within the state.

## CONSTRUCTION

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Exemption statutes by an almost universal rule have been liberally construed. However, exceptions to the general rule of interpretation are found especially in the earlier decisions.<sup>1</sup>

The general attitude of the courts is shown in the following decisions:<sup>2</sup>

*Massachusetts.* "The [exemption] statute is humane and beneficial in its purpose and operation and fairly entitled to as liberal a construction as can be given it consistently with its true and just interpretation." *Pond v. Kimball*, 1869, 101 Mass. 105.

*Wisconsin.* "This court has uniformly held that the exemption laws must have a liberal construction so as to secure their full benefit to the debtor." *Below v. Robbins*, 1890, 76 Wis. 600.

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<sup>1</sup> For an example of strict construction see *Rue v. Alter*, 1847, 5 Den. (N. Y.) 119.

<sup>2</sup> For further illustrations of liberal construction, see *Good v. Fogg*, 1871, 61 Ill. 449; *Hutchinson v. Whitmore*, 1892, 90 Mich. 255; *Rustad v. Bishop*, 1900, 80 Minn. 497.

*Iowa.* "Exemption statutes are the product of an enlightened public policy which seeks to afford some measure of protection to the family of an unfortunate debtor as well as to the debtor himself and incidentally to the public and are always to be liberally construed to effect their intent and purpose." *Cook v. Allee*, 1903, 119 Ia. 226.









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